IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 536 OF 1999

1. Baboo Ramchandra Shinde,]
   aged 32, Occ: business,]

2. Bapaso Ramchandra Shinde,]
   aged 52, Occ: Agriculture,]

3. Sanjay Bapuso Shinde,]
   Age: 23, Occ: Agriculture,]
   All R/o Kasbe Digraj,]
   Taluka Miraj, Dist: Sangli.] .. Appellant

Vs

The State of Maharashtra]
through Rural Police Station,]
Sangli, In C.R. No.79/1997.] .. Respondent

Mr. J.V. Patil i/b S.D. Dharmadhikari for the appellants.

Mrs. V.R. Bhosale, A.P.P., for the respondent-State.

CORAM: S.B. MHASE &
ANOOP V. MOHTA, JJ.

DATED: 23RD DECEMBER, 2004

ORAL JUDGMENT : [Per Anoop V. Mohta, J.]

1. The appellants were charged, tried and convicted for the murder of Appasaheb Ramchandra Shinde (the deceased). Therefore, this common Appeal.

2. The deceased was the real brother of appellant Nos.1 and 2 (accused Nos.1 and 2). Appellant No.3 is the son of appellant No.2. Appellant Nos.1 and 2 were residing together at village Digraj. The deceased was also living with his family in the same lane at the relevant time. Pandurang (PW5) and Vasant are the real brothers of appellant Nos.1, 2 and the deceased. A jointly owned land at Savalaj was sold by the said Pandurang and Vasant, without consulting the deceased. The share of the sale proceeds were not received by the deceased. The residential house of the deceased went to the share of Pandurang. The deceased was not ready to vacate the same. It is the prosecution case that on 8th August, 1997, accused Nos.1, 2 and 3 and some unknown persons entered the said house of the deceased and gave threats to vacate the said house. At that time, the deceased was not in the house.

3. As per the prosecution, on 9th August, 1997, in front of Police Post, at village Kasbe, Digraj, Taluka Miraj, District Sangli, between 6.30 p.m. to 7.00 p.m., when Appasaheb (the deceased) alighted from the bus, at the Bus Stop, which is near the Police Chowky, all the accused with common intention attacked the deceased by sickle, sword and khukri. The deceased,

because of the injuries and profused bleeding, died on the spot. This incident, as per the prosecution, was witnessed by Jaipal Patil, a Police Constable (PW10) who was, at the relevant time, standing at a Pan shop near the Police Chowky. Before Jaipal (PW10) could reach the spot, the deceased was already dead because of the serious injuries. The appellants ran away from the spot. The complainant, because of his illness, could not chase them. The son of the deceased viz. Amar (PW6) as alleged, had noticed that all the accused, with the weapons, were running towards the house of accused No.2. As he had also noticed a crowd, he went to the place of the occurrence and found the dead body of his father. He rushed immediately to the house and along with his mother, sisters and other family members, returned to the spot of the incident. PW10 Jaipal stood near the dead body for about 15-20 minutes. He, thereafter reported the incident to Vishrambaug City Police Station, Sangli, on phone. He was unable to contact Sangli Rural Police Station. On information, at about 8.00 p.m., API Bagal (PW16) reached the spot at Digraj. He recorded a Panchanama of the scene of offence and an inquest on the dead body. On a third attempt, he was able to record the statements and a complaint of Vaishali, the daughter of the deceased (PW7). The same was registered as C.R. No.79/1997 by

the Police Station, Sangli (Rural). On 10th August, 1997, API Bagal, visited Digraj and interrogated 15 witnesses, including Constable Jaipal Patil (PW10) and recorded their statements also. The appellants-accused were absconding and, therefore, could not be arrested till 22nd August, 1997. In the meantime, in the search of the house of accused No.2, the sickle and the khukri were seized and attached. It is the prosecution case that the appellants' clothes were blood-stained, when they were arrested on 22nd August, 1997. On 24th August, 1997, the blood stained sword was seized in the presence of PW2. The investigation was completed by PW16, Vijay Bagal and the appellants were chargesheeted. The defence of the appellants was of the total denial and false implication. The learned Judge, after considering the material on the record, convicted the accused under Section 302 r/w 34 of the Indian Penal Code (IPC) and has imposed the sentence to suffer rigorous imprisonment for life.

4. We have heard the learned counsel appearing for the parties. We have gone in extenso, through the record with the assistance of the counsel appearing for the parties.

5. The prosecution has examined 16 witnesses in

support of their case. There was no defence witness. PW1 Babasaheb, a panch witness, was examined to support the Panchanama of the clothes attached from the person of accused Nos.1, 2 and 3 on 22nd August, 1997. PW2, Shripal is a panch witness, who was examined to support the attachment of sword on 24th August, 1997. PW3, Kumar & PW4 Badasha, the panch witnesses, were examined to support the house search of accused No.2, dated 10th August, 1997. PW5, Pandurang is the brother of the deceased, whose statement was recorded on 28th August, 1997. PW6, Amar is the son of the deceased whose statement was recorded on 10th August, 1997. PW7 Vaishali, is the daughter of the deceased, who had lodged the complaint dated 9th August, 1997. PW8 Shubhada is the daughter of the deceased. PW9, Ibrahim Pathan and PW14, Shivaji Kashid are the panch witnesses to the scene of the offence dated 9th August, 1997. PW10, Jaipal (Police Constable) is the eye-witness to the incident, dated 9th August, 1997. PW11, Dr. Mahadev is examined to support the sample of blood of all three accused. PW12, Dr. Shahnawaz is examined to support the Post Mortem Notes and the Certificate. Both these doctors were from the Civil Hospital, Sangli. PW13, Dattatraya who carried the letter dated 19th August, 1997, to the Chemical Analyzer. PW14, Shivaji is a panch witness to the scene of offence. PW15,

Yeshwant is the Police Head Constable, Sangli Rural Police Station and PW16, Vijay Bagal, API, is the Investigating Officer. Out of these witnesses, PW3 and PW4, the panch witnesses to the house search of accused No.2 dated 10th August, 1997, were declared hostile.

6. There is no much dispute that the death of the deceased was homicidal. PW11 and PW12 have supported the same. There were 13 incised wounds caused with the sharp-cutting and heavy objects. All the external, as well as, the internal injuries were ante-mortem. Rigour mortis was present. The cause of death was due to haemorrhage and injury to the brain, which include the external and corresponding injury No.2, (that itself was also sufficient to cause death). The doctor has, however, opined that the age of the injuries might be 6 hours before the death. The body was examined on 10th August, 1997, at about 1.15 p.m. Therefore, taking into consideration the nature of the injuries and the evidence placed on the record, there remained no doubt that the death was homicidal.

7. PW10, Jaipal is the eye-witness, as per the prosecution case. Based on the testimony of this witness and other corroborative circumstances, the learned Judge has passed the impugned judgment and

order. After re-appreciation of the evidence of this witness, we are of the view that this witness is not reliable and trustworthy, even though he is a Police Head Constable. Even the presence of this alleged sole eye-witness, at the relevant time itself is doubtful and as contended, he may be, a got-up witness. The prosecution has, in fact, failed to examine any independent witness to support even the presence of this witness (PW10) at the relevant time. This witness has deposed that he had purchased medicine from the shop at the village. At about 6.30 p.m. to 7.00 p.m., he went to the Pan shop near the Police Chowky. There is nothing brought on the record to show that he had purchased some medicines. This witness was unable to remember the names of the the Medical Shop, as well as, of the medicine, even though he had collected the receipt of the medicine. He did not even remember the name of the Pan Shop, even though he was a regular visitor of the said shop. The Pan shop owner was also not examined to corroborate the presence of this witness at the relevant time. This witness has deposed that he had noticed accused No.2 and two other persons beating one person by the weapon like sword. The distance between the place of the occurrence and the Police Outpost was 16-17 feet from the Gate of the Police Outpost. This witness could identify only accused No.2

and no other persons.

8. There are suggestions put to him in the cross-examination to show that accused No.2 had filed a complaint against this witness and he was transferred on account of the complaint made by the accused No.2. Another suggestion, therefore, was that, at the instance of the Police, this witness gave a false evidence against the accused being a got-up witness. We have also noted from the evidence of this witness that while the appellants were beating the deceased, he could not shout from the place where he was standing. He could not reach the spot to save the deceased. He could not request anybody to help him and/or to assist him during all this relevant time. He could not even chase or request anybody to chase the accused. He failed to contact Sangli Rural Police Station on phone and, therefore, he had called Sangli City Police Station. The Constable Kumbhar received the phone call. However, we have noticed that there is nothing on the record to such entry or any material to show that such message was received by the Head Constable Kumbhar. This witness has deposed that he could identify the accused No.2 at the relevant time, but this witness had identified the other two witnesses for the first time in the Court. There was no identification parade held which, in the

facts and circumstances of the case, was necessary, so far as the other accused are concerned.

9. We have also noted that PSI Bagal (PW16) reached the spot after about 3 to 4 hours. This witness, PW10, was not available at the relevant time on the spot. This witness has deposed that he stood near the dead body for 20 minutes only and thereafter, left the place and sat in the Police Chowky. This means that the dead body, as well as, the place of the occurrence, was not protected and remained unattended. This witness has deposed that he could not identify the dead person and since he was was dead, he, therefore, could not take the deceased to the hospital also. We have further noted that this witness has nowhere informed or reported this incident to any of his family members or any other related or connected persons of the locality. This witness had also been unable to identify any other person from the locality who were present at the relevant time. This witness has also admitted that there were no Police Officers posted at the Chowky and, at the relevant time. In this background, it was also suggested in the cross-examination that as the incident took place opposite to the Police Outpost and, as at the relevant time, there was no one to attend the incident, and this would damage and/or mar the reputation of the

Police Department and, therefore, this witness was insisted upon to depose falsely against the accused.

10. We have further noted that there is nothing on the record to show that this Police Constable (PW10) was on leave and, therefore, he was present at the relevant time near the spot in question. He has deposed that he gave information to Sangli City Police Station around 7.30 p.m. and, as noted, for three hours, he did not even try or attempt to communicate and/or reach the Sangli Rural Police Station or the Sangli City Police Station for quick action. The distance between Digraj Outpost and the Rural Police Station was 9 kilometres only. He deposed that after making phone call, he had gone to his room and remained there till the arrival of the Police Staff. Surprisingly, no statement of this witness was recorded immediately by the PSI. On the contrary, the case on the record is that the PSI was not aware at that time that this Police Constable had witnessed the incident. This witness has further deposed that he had not lodged any complaint because no one came to record his complaint. He had not informed anybody because no one had asked him to inform. He came out only after the Police Staff came, but still he was not aware about the name of the deceased.

11. PW10, Jaipal, has admitted that he did not disclose this incident to the Police Officer outside or even to his family members till his statement was recorded by the Investigating Officer on the next morning. After recording of his statement on 10th August, 1997, his supplemental statement was also recorded. We have also noted that his statement before the Investigating Officer was in the handwriting of this witness only. Therefore, without verification or confirmation, the handwritten statement of this witness was accepted by the Police. The said statement was not even signed by this witness.

12. PW10, Jaipal has admitted that there were about 40-50 persons present at the relevant time and place of the incident when the incident. He has also deposed that when he went near the dead body, some other persons of the same locality had been there, but this was after darkness. As noted, this witness was unable to give name and description of those persons. Therefore, the conduct of this witness supports the submission made by the learned counsel for the appellants that this witness was a got-up witness, unreliable and he was not a natural witness.

13. The learned Judge, according to us,

mis-applied the law laid down in **AIR 1988, S.C., 696** [Appabhai Vs. State of Gujarat], specially in paragraphs 11 and 12 and wrongly justified the non-examination of independent witness except Jaipal Patil by further observing that due to fear and shock or apathy, there is tendency amongst the people from the society, not to associate themselves with such matters and particularly, matters relating to Police investigation. We have noted that even the presence of Jaipal Patil (PW10) at the relevant time was doubtful and quite unnatural.

14. It is true, as observed in **AIR 1987, SC, 98** [State of Assam Vs. Mahim Berkalaki] that evidence of Police Official cannot be underestimated merely because they are Police Officers, but what is required is that the testimony of such witnesses should be corroborated from other independent and disinterested witnesses, then conviction can be recorded in such cases. In the present case, he (PW10) claimed to be the eye-witness to the incident, therefore, the facts are distinguishable. In **AIR 1973, S.C., 2783** [Nathu Singh Vs. State of M.P.] the Apex Court held that the testimony of the Police Official can be relied upon where no hostility towards the accused person is shown. In the present case, we have noted some suggestions about the complaint lodged

by accused No.2 against Jaywant Patil (PW10). We are discarding the evidence of this witness on merit itself, as recorded above, as it raises various doubts and unable to support the prosecution case fully, for want of independent witnesses and other corroborative material. The incident took place between the period 6.30 p.m. to 7.00 p.m. There is no doubt that when the Spot Panchanama was recorded, the time was 8.30 p.m. and, therefore, darkness must have set in and further investigation was completed by the Investigating Officer with the help of the petromax.

15. We have noted in the present case that the statement of this (Police Official) eye-witness (PW10) was recorded on 10th August, 1997, i.e. on the next day, after the incident. Therefore, reliance cannot be placed on the decision as referred by the learned Judge. [State of Maharashtra Vs. Wafati Babu Qureshi - **1997 (1) Bombay Criminal Cases, 667**].

16. The Apex Court has already observed in **AIR 1979, S.C., 135** [Ganesh Patel Vs. State of Maharashtra] that delay in recording of the statements of the material witnesses casts a doubt and suspicion on the credibility of the entire case of the prosecution. In the present case, according to us, delay in recording

the statement of PW10 raises various doubts and suspicion. The Apex Court in **1997, S.C.C., 507** [Devinder Vs. State of Harayana] has raised doubts in the prosecution case as the material witness and conduct in keeping silence for long time, dislinks the prosecution case. In the present case, PW10 had kept silent till the morning of 10th August, 1997, and did not whisper anything about the incident even to his family members or to the outsiders, before his statement was recorded. The conduct of this material witness was unusual and quite unnatural, being a Police Official.

17. PW12 - Dr. Shahnawaz A. Naikwade has confirmed the age of the injuries about six hours before the death. The claim of PW10 that he was an eye-witness to the incident also falsifies the prosecution's case and the presence of this witness at the relevant time on the spot. If the deceased had received the injuries six hours earlier, than the time mentioned by PW10 Jaipal, then even the medical evidence nowhere supports the prosecution case and it falsifies the affirmative story of this witness (PW10) also. This, in fact, supports the defence case, as recorded under Section 313 of the Criminal Procedure Code, that the deceased was murdered by some hired persons and the appellants were falsely implicated. In this background, it is difficult to

accept and believe the evidence of this witness (PW10) to support the prosecution case and the conviction, as imposed. We are, therefore, of the view that this witness is unreliable, untrustworthy and no conviction can be imposed on the basis of the evidence of this alleged eye-witness Mr. Jaipal (PW10).

18. Now, therefore, the question is, are there other circumstances sufficient to maintain the order of conviction as imposed. We have already noted that PW3 - Kumar Raosaheb Landeq and PW4 - Badasha Appalal Mujawar, the panch witnesses, have been declared hostile. In the result, the search of the house of accused No.2 in his absence and the Panchanama dated 10th August, 1997, remained unsupported. This means recovery of the blood stained sickle (article 5) and the recovery of the blood stained khukri (article 6) which were the weapons alleged to have been sued by the accused Nos.2 and 3 respectively, also remained unproved. The blood stained sword (article 19) was alleged to be discovered on 24th August, 1997. The date of the incident was 9th August, 1997. Even though blood group "O" was found on the sword (article 19) still, in such circumstances, the delayed recovery of sword at the instance of accused No.2 cannot be the sole reason to convict the accused. In the present case, as noted, on 22nd August, 1997,

PW16, Vijay Bagal arrested all the accused and blood stained clothes were also seized from their person. It is quite unnatural that the appellants were wearing the blood stained clothes and moving around. PW1 Babasaheb was examined to support the attachment of the clothes from the person of the accused. It is difficult to believe this prosecution story to maintain the order of conviction based on the discovery of the blood stained clothes of all the accused in such circumstances.

19. The other corroborative evidence led by the prosecution to support their case of motive and other circumstances to link the appellants with the crime is PW7 - Vaishali who is the daughter of the deceased and who had lodged the complaint at about 11.30 p.m. on 9th August, 1997, as PW16 had visited for enquiry at her place. The time of the incident was about 6.30 p.m. This witness was not an eye-witness. The complaint was lodged on the basis of information received by some other person. She had no knowledge about the incident, except after visit of the place of the occurrence.

20. The next important witness, as relied upon by the prosecution, as well as, the learned Judge is PW6-Amar, who is the son of the deceased. He is also not an eye witness to the incident. He has, however, supported

the prosecution case that he saw accused No.1, 2 and 3 running with the weapons. At the Bus Stop, there was a crowd and, therefore, when he visited the said Bus Stop, he noticed the dead body of the deceased. We have also noted that the material improvements made by this witness in his deposition that he did not make a statement before the Investigating Officer that he had noticed accused No.1 and 3 near the dead body. But, before the Court he had made the statement that he saw them near the dead body. This is nowhere corroborated by any other witness as PW10, except for accused No.2, was unable to identify or recognise any other person at the relevant time. The conviction cannot be maintained on the basis of the evidence narrated in paragraphs 3, 4 and 5 in the testimony of PW6 about the incident dated 8th August, 1997, and/or about the phone call at 5.00 p.m. by the deceased on 9th August, 1997, even though this fact was corroborated to some extent by PW7 and PW8. We have noted that this witness has, in his cross-examination, admitted that there was no quarrel regarding the residential house prior to the day of the incident. We find that this witness did not even notice the presence of PW10 on the spot at the relevant time and has not even bothered to inform the incident to the Police at the Police Outpost. The omission by this witness in respect of accused Nos.1 and 3 about coming

to the old house from the spot is also very material. Therefore, these improvements and omissions by this witness again creates doubts in the prosecution case.

21. PW5, Pandurang, is the brother of the deceased. His statement was recorded on 28th August, 1997. As we have already noted that all these relatives of the deceased, including as also of the appellants and their evidence, nowhere fully supports the prosecution case of the motive behind the murder in question. As per the prosecution case itself, Pandurang (PW5) became the owner of the house in view of their partition. This Pandurang was interested in getting the premises vacated. There is nothing on the record to justify that the appellants have any special interest or motive to kill the deceased. PW5, PW6, PW7 and PW8, according to us, unable to support the prosecution case of the motive.

22. PW16 Vijay Bagal, the Investigating Officer, for whatever may be the reason, reached on the spot after about three hours from the time of the incident. He could not collect detailed information and/or description of the persons who were witnessing the incident in question. Admittedly, no independent witnesses have been examined to support the prosecution

case and/or even to justify the presence of PW10. There is no evidence brought on the record, even after recording the statement of PW10, who claimed to be the eye-witness of the incident. No other persons, including the Pan shop- owner or the Medical shop-owner have been examined to support the prosecution case. There is no dispute that this witness reached the spot after three hours and during these three hours, from the time of the incident, the spot of the occurrence remained unattended. PW10 was near the dead body for 15 to 20 minutes only. When this PSI reached the spot, PW10 was neither available, nor there was any contact made by PW10 with PW16. This witness has deposed that after reaching the spot, he went to the house of the deceased and met other family members, but still he could not record their statements at the first visit. On the third attempt, he could take the statement of the family members, including PW7 Vaishali, the complainant. Therefore, the dead body, as well as, the place of the incident again remained unattended for a long time. The complaint was lodged at 11.30 p.m. by the complainant. All the Panchanamas of the spot of occurrence were recorded after more than three to four hours from the time of the incident. There is no dispute that the place of incident was near the Bus Stop. There is no other witness to support the case of the prosecution

that the deceased alighted from the bus at a particular time. This witness has not collected such information or material. The statement of PW10 was recorded on the next day i.e. on 10th August, 1997. This delay remained unexplained. The conviction cannot be imposed on the basis of proved Panchanama of the scene of offence or the samples of blood of all the accused in absence of any connecting evidence to the effect that the appellants and no one else had committed the offence in question. In this background, the house search of accused No.3, since PW3 and PW4 were declared hostile, also loses its strength and dislinks the circumstantial evidence. We have also noted that this witness has accepted on the record, that the handwritten unsigned statement of PW10 under Section 161 of the Criminal Procedure Code in a very casual way. He had blindly accepted the statement given by PW10, specially when PW10 was the sole eye-witness. As noted, there was no identification parade held during the investigation. All these missing links raise doubts in the prosecution case. Therefore, it cannot be said, in the background and the material before us, that the prosecution has proved the offence of the appellants, beyond reasonable doubt.

23. PW9, a panch witness to the scene of offence

has deposed that he did not notice blood stains on the spot and except the dead body, there were no other articles found there. This witness was also declared hostile. In the cross-examination by the prosecution, nothing could be elicited from this witness to support the prosecution case, except the identification of his signatures on the papers. This witness has deposed in further cross-examination that he had signed an already written panchanama. He further answered that near the Police Outpost, there was no tube light or bulb fitted on the pole. The evidence of this witness also nowhere supports the prosecution case that PW10 Jaipal had witnessed the incident.

24. The homicidal death and the injuries on the dead body itself cannot be the sufficient reason to connect the appellants to the offence. We are not interfering with the order of conviction merely because it is the evidence of the interested or related witnesses like PW5, 6, 7 and 8, who are the relatives of the deceased, as held in **AIR 1971, S.C., 296** [Agnoo Vs. State of U.P.]. and in **(1999) 3, S.C.C., 97** [Ramchandra Reddy Vs. State of A.P.]. For the reasons recorded above, we are discarding the testimonies of these witnesses as there are no corroborative and connecting circumstances and evidence or material to support the

main eye-witness PW10. These related witnesses are definitely not eye-witnesses to the incident in question. The evidence of these interested witnesses is also not corroborated and supported by Dr. Shahnawaz (PW12) so far as time of the death of the deceased is concerned as the age of the injury was opined was of six hours' before the noted time of incident. We have observed that these interested witnesses were unable to support the prosecution case fully even in respect of the motive of the appellants for doing such a criminal act. In our view, the motive is also not proved [Nathubhai Yadav Vs. State of Bihar **AIR 1997, S.C., 1808**].

25. In the present case, the entire process of seizure of weapons, seizure of clothes on the person and finding of human blood, fails to support the prosecution case. These dislinks are also material, which cannot be overlooked. The improper sealing of the articles before sending them to the Chemical Analyzer for report is also a relevant factor against the prosecution as observed in **1996, Cri.L.J., 314** [Asharaf Hussain Shah Vs. State of Maharashtra]. Therefore also, no support can be taken from the Chemical Analyzer's report as such lacunas raise doubt in the prosecution case.

26. The cumulative effect of all this is that the conviction and the imposition of the sentence is unsustainable and, therefore, liable to be quashed and set aside.

27. Taking into consideration the testimonies of all these witnesses led by the prosecution and the material placed on the record, we are not agreeing with the reasoning given by the learned Sessions Judge. In view of the above reasoning, we are interfering with the reasoning and the impugned judgment and order.

28. There is merit in the Appeal. The judgment and order passed by the learned Sessions Judge is hereby quashed and set aside.

29. The Appeal is allowed. The accused Nos.1, 2 and 3 are acquitted. They be set at liberty if not required for any other offence.

[ANOOP V. MOHTA, J.] **[S.B. MHASE, J.]**

[srpasha@hc]